



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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Washington, D.C. 20590

Mr. Kurt Colborn
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Cranberry Township, PA 16066

Ref No.: 04-0267

This responds to your November 17, 2004 letter requesting clarification of the term "exclusive use" as it is used in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) for radioactive materials. Specifically, you ask if a shipment of low specific activity material (LSA) or surface contaminated objects (SCO) that is opened, repackaged, re-manifested at a transload facility, and re-offered into transportation to its final destination may be shipped as "exclusive use" under § 173.427(a)(6) .

The term "exclusive use" is defined in § 173.403 as sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must provide to the initial carrier specific written instructions for maintenance of exclusive use shipment controls, including the vehicle survey requirement of §173.443 (c) as applicable, and include these instructions with the shipping paper information provided to the carrier by the consignor.

In the scenario you described, a radioactive material (LSA or SCO) is transported from Point A to Point B. The shipment is opened, repackaged, re-manifested and re-offered into transportation at a transload facility on the way to its final destination (Point B).

In effect, there are two separate shipments in this scenario. The first is the shipment from Point A to the transload facility. The second is the shipment from the transload facility to Point B.

For the shipment from Point A to the transload facility, the person originally offering the material into transportation (Point A) is the consignor and the transload facility is the consignee. The shipment qualifies as "exclusive use" if it meets all of the following criteria:

- (1) It meets the requirements of § 173.427 for LSA and SCO consigned as exclusive use.
- (2) All initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.



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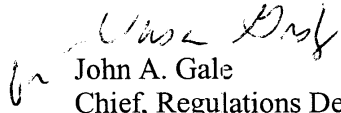
(3) The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment.

(4) The consignor provides to the initial carrier specific written instructions for maintenance of exclusive use shipment controls, including the vehicle survey. requirement of § 173.443(c) as applicable, and includes these instructions with the shipping paper information provided to the carrier by the consignor.

For the shipment from the transload facility to Point B, the transload facility is the consignor, and the person receiving the shipment at Point B is the consignee. The shipment may be shipped as "exclusive use" if it meets the criteria listed above.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,


John A. Gale
Chief, Regulations Development
Office of Hazardous Materials Standards



E. Chenlaub
§173.403
§173.427
Definitions
04-0267

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November 17, 2004

SUBJECT: Interpretation; Exclusive Use Definition

Dear Mr. Mazzullo,

The purpose of this letter is to request confirmation of our interpretation of the requirements of 49 CFR 173.403 and 173.427 with respect to the definition of exclusive use. Specifically, this letter seeks concurrence that transport may be interrupted for repackaging, and still be compliant with the definition of exclusive use.

In the past, we've received regulatory guidance (such as ref. no. 03-0061) indicating that the definition of "exclusive use" is met when packaged Class 7 material is transferred from one conveyance to another (ie. truck to rail), in accordance with exclusive use instructions issued by the consignor. We have previously interpreted exclusive use to permit the transfer of bulk packages from one conveyance to another, but to prohibit opening packages during shipment.

Upon further review we understand that shipping is still compliant with exclusive use provisions if a shipment of Class 7 material is received by the consignee, opened, repackaged, and then re-manifested for shipment in a new container for shipment to its final destination. For example, we understand that shipments of Class 7 material in trucks may be received at a transload facility. Upon receipt of the material, the facility may load a railcar with the contents of several trucks, then re-manifest the railcar for shipment to a final destination.

Question: Is the repackaging and shipping activity described here permissible, or does it circumvent the exclusive use provisions?

Please feel free to contact me at (724) 772-9800, ext. 5560 if you have any questions about this request. Thank you for your assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt Colborn", written in a cursive style.

Kurt Colborn
Director, Technical Services
MHF Logistical Solutions